

Sub: In the matter of petition under Section 86(1)(e) of the Electricity Act, 2003 seeking directions to make payment of the Petitioner's outstanding invoices for the electricity delivered and late payment surcharge in terms of the PPA dated 13.06.2016 for the delayed payment made by the Respondent and to set up payment security mechanism (including opening of revolving irrevocable letter of credit (cumulative) to secure timely payment of Petitioner's invoices

ORDER

(Date of hearing: 25th July,2017)

(Date of order: 29th July,2017)

M/s Adani Green Energy Ltd., - Petitioner
Adani House, Near Mithakhali Six Roads,
Navrangpura, Ahmedabad - 380009

M.P. Power Management Co. Ltd., - Respondent
Block No. 11, 3rd Floor, Shakti Bhawan,
Rampur, Jabalpur- 482008

Shri Aditya K. Singh, Advocate and Shri Rakesh Shah, AVP of the Company appeared on behalf of the petitioner.

Shri Manoj Dubey, Advisor (Law) appeared on behalf of the respondent.

2. The petitioner, M/s Adani Green Energy Ltd. has filed this petition under Sections 86(1)(e) of the Electricity Act, 2003 seeking directions to make payment of the Petitioner's outstanding invoices for the electricity delivered and late payment surcharge in terms of the PPA dated 13.06.2016 for the delayed payment made by the Respondent and to set up payment security mechanism (including opening of revolving irrevocable letter of credit (cumulative) to secure timely payment of Petitioner's invoices. In its petition, the petitioner mainly prayed as under:

- (i) Direct Respondent to make payment of all outstanding amount along with late payment surcharge payment to the petitioner in a week time from the date of order;
- (ii) Direct Respondent to establish regular practice to release all the future payments in accordance with terms and time period stipulated in the PPA and Tariff Order and failing such, payment to be released with LPS;
- (iii) Forthwith set-up payment security mechanism (including opening of revolving irrevocable letter of credit (cumulative) in favour of the petitioner) to secure timely payment of Petitioner's invoices and in terms of the Tariff Policy.

3. The case was listed for motion hearing on 16.05.2017. During the motion hearing, the petitioner restated the contents of the petition. The Commission admitted the petition for hearing and fixed the next date of hearing for 20.06.2017 which was adjourned to 25.07.2017 due to non-receipt of copy of the petition by the respondent. The respondent filed a written submission on 19.07.2017.

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4. During the hearing on 23.08.2016, the respondent stated that:
- The petitioner is relying on the articles 12.14 and 12.16 of the tariff order and has not considered the article 12.20.
 - The petitioner has not served a 15 days' notice. There is no dispute under Section 86(1)(f) of the Electricity Act, 2003.
 - In cases grievances are not met, the petitioner has not elected for permission for third party sale as contemplated under article 12.20 of the tariff order.
 - The payment could not be made to the petitioner due to liquidity crunch of the respondent. Therefore, the schedule of payment cannot be given.
 - The terms and conditions of the PPA are governed by the tariff order and the tariff order provides the scheme of payment.

5. During the hearing on 23.08.2016, the petitioner stated that:
- The respondent in its reply has agreed that the payment is pending.
 - The sale to third party is an additional liberty provided to the petitioner.
 - The PPA cannot be terminated by one party.

The petitioner has also quoted references of the Hon'ble Court's orders.

6. Having heard the petitioner and the respondent and on considering their written submissions, the Commission has noted that:
- The respondent has not submitted any schedule for payment to the petitioner.
 - The payments are not being made by the respondent timely in terms of the provisions of the tariff order and the PPA.
 - The respondent is accepting the claim of the petitioner but holding the payment of the outstanding bills of the petitioner for months together on the pretext of liquidity problem.

7. Under the aforesaid circumstances, the Commission directs the respondent to make the payment of outstanding invoices to the petitioner in terms of the provisions of the PPAs/tariff order. The Commission further directs the respondent to make suitable arrangements so that in future such delay is avoided.

8. With the above directions, the petition no. 14 of 2017 stands disposed of.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman